

ST 00-0020-PLR 10/02/2000 EXEMPT ORGANIZATIONS

Sales by exclusively charitable, religious or educational organizations are not subject to Retailers' Occupation Tax when it can be said that such selling is noncompetitive with business establishments. See 86 Ill. Adm. Code 130.2005. (This is a PLR).

October 2, 2000

Dear Mr. Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter dated August 16, 2000. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to ORGANIZATION for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither ORGANIZATION nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

On behalf of the ORGANIZATION operating at the # separate schools in District #, we hereby request a Private Letter Ruling pursuant to 2 Ill. Adm. Code 1200.110, regarding the applicability of the Illinois Retail Occupation Tax ('ROT') and/or the Illinois Use Tax ('Use Tax') to the transactions described herein. When necessary, reference has been made to the requirements of 2 Ill. Adm. Code 1200.100(4)(b)(1)-(8). (A Form IL-2848 'Power of Attorney' designating the undersigned as entitled to submit this ruling request on behalf of ORGANIZATION is attached hereto as Exhibit 1.)

The Requested Ruling

The ORGANIZATION request a Private Letter Ruling that the ORGANIZATION are entitled to engage in an annual wrapping paper fundraising sales without incurring ROT liability. See IDOR Regulation, Section 130.2005(a)(3).

Statement of Facts

The ORGANIZATION is a not-for-profit association organized and existing under the laws of the State of Illinois. ORGANIZATION is organized exclusively for charitable and educational purposes within the meaning of Section 503(c) of the Internal Revenue Code and IDOR Regulation, Section 130.2005(a)(1)(D).

The local ORGANIZATIONS operating at the schools in District # are not separate legal entities, but are operated as divisions of the ORGANIZATION. The local ORGANIZATIONS do not have separate tax I.D. numbers, separate not-for-profit exemption numbers under Section 103.2007, or separate state reseller's certificates, and operate under the designations granted to ORGANIZATION. The local ORGANIZATION have separate officers who manage their respective ORGANIZATION under the auspices of ORGANIZATION. While local ORGANIZATION maintain separate bank accounts (all under the ORGANIZATION tax and not-for-profit designations), all state and federal tax matters and annual auditing functions are performed at the ORGANIZATION level.

The mission of ORGANIZATION and the local ORGANIZATION is to promote cooperation, understanding and communication between school and home and to facilitate District-wide activities in furthermore of the educational process. All parents and/or guardians of children enrolled in District # schools, as well as current District employees are eligible for membership in ORGANIZATION. Membership is maintained at the local ORGANIZATION level. Thus, both ORGANIZATION and the local ORGANIZATION operating at the individual schools are composed of volunteers—parents, guardians, teachers, and other school personnel—who generously donate their time and talents to help students and to facilitate the educational process in CITY's schools.

One of the principle functions of the local ORGANIZATION is fundraising. Funds raised by the local ORGANIZATION are used to purchase computers, audio-visual equipment, teacher supplies, demonstrative aids, books and a wide variety of items that benefit the schools and the educational process. Funds raised by the individual ORGANIZATION are invested back into the schools and offset taxes that otherwise would be necessary to acquire the same materials and services for the schools.

Analysis

During the fall of each year, majority of the local ORGANIZATION operating at the individual schools in District # organize and run wrapping paper fundraisers. The wrapping paper sold by the local ORGANIZATION is generally priced at least double the cost of comparable wrapping paper at area merchants. Thus, the eleemosynary intent of the purchasers to benefit local schools—rather than the competitive price or the quality of the product—is the overwhelming determinative factor in wrapping paper sales.

Department regulations allow as ROT liability exemption for noncompetitive sales by nonprofit organizations. See IDOR Regulation, Section 130.2005(a)(3). The undersigned requests a Private Letter Ruling that would enable each of the local ORGANIZATION operating at the separate schools in DISTRICT to engage in an annual wrapping paper fundraiser without incurring ROT liability, as such fundraisers fall

squarely within the noncompetitive exemption created in IDOR Regulation, Section 130.2005(a)(3).

The Attorney General has established a number of tests to determine if a sale is noncompetitive. See IDOR Regulation, Section 130.2005(a)(3)(B) & (C). The wrapping paper sales are conducted solely by members of the local ORGANIZATION, all net proceeds are returned to the school, and the sales only occurs once a year, thereby satisfying the requirements of Section 120.2005(a)(3)(B)(i)-(iii). Additionally, the dominant motive of buyers of the wrapping paper is donative. See IDOR Regulation, Section 130.2005(a)(3)(B)(iv). Similar to the sale of Girl Scout Cookies, the mark-up on wrapping paper is substantial and recognized by those who choose to purchase the goods. The purchase price of the wrapping paper sold by the local ORGANIZATION is double the cost of comparable wrapping paper sold at local retail stores, and therefore, a buyer's purpose in buying the overpriced wrapping paper is clearly to make a charitable gift to the school as opposed to simply acquire the merchandise.

Because the primary motivation behind wrapping paper purchases is eleemosynary, the sales by the local ORGANIZATION cannot be said to compete with local business establishments that also sell wrapping paper. If all the buyers desired was the paper in question, they would head to a local retailer and buy the paper for literally half the cost. Because the retail establishment does not offer the opportunity for the buyer to give half the cost of the item back to the schools, sales by local retailers and sales by local ORGANIZATION are distinct and not in competition with one another.

To the best of the knowledge of ORGANIZATION, the local ORGANIZATION, and the undersigned, the Department has not previously ruled on the same or a similar issue for the taxpayer or any predecessor and neither the taxpayer nor any representative has ever previously submitted the same or similar issue to the Department at any time, including any such request that may have been withdrawn prior to the issuance of a letter ruling. Besides the authorities listed above, we are aware of no other supporting or contrary relevant authorities within the meaning of 2 Ill. Admin. Code 1200(b)(5)&(6).

No audit or litigation is currently pending with the Department. No trade secret or other information need be deleted from the publicly disseminated version of the private letter ruling.

Conclusion

We respectfully request the Department issue a Private Letter Ruling that the local ORGANIZATION within the ORGANIZATION are entitled to engage in an annual wrapping paper fundraising sales without incurring ROT liability within the meaning of IDOR Regulation, Section 130.2005(a) (3).

If you have a contrary view, we would request the opportunity to discuss the matter with you further. Thank you for your assistance in this matter. If you have any questions or need additional information, please contact me at #####.

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an exemption identification number (an "E" number). See the enclosed copy of 86 Ill. Adm. Code 130.2007. This number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E number, then its purchases are subject to tax. Please be aware that only sales to organizations holding the E number are exempt, not sales to individual members of the organization.

Organizations that have E numbers are also allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. These limited amounts of selling are described in the enclosed copy of 86 Ill. Adm. Code 130.2005(a)(2) through (a)(4). An exempt organization may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities (two fundraisers a year) without incurring Retailers' Occupation Tax liability.

Under Section 130.2005(a)(3), sales by exclusively charitable, religious or educational organizations are not subject to Retailers' Occupation Tax when it can be said that such selling is noncompetitive with business establishments. As you indicated in your letter, the Attorney General has laid down tests for determining that such selling is noncompetitive. First, the transactions must be conducted by members of the charitable entity and not by any franchisee or licensee. Section 130.2005(a)(3)(B)(i). You state that the wrapping paper sales are conducted solely by members of the local ORGANIZATION. Therefore, this requirement is met. Second, all of the proceeds must go to the charity. Section 130.2005(a)(3)(B)(ii). You also state that all net proceeds are returned to the school. Since all the proceeds are first received by the associations, and then turned over to the schools, this requirement is met. Third, the transaction must not be a continuing one but rather should be held either annually or a reasonably small number of times within a year. Section 130.2005(a)(3)(B)(iii). You state that the sales only occur once a year, thereby satisfying this requirement. Fourth, the reasonably ascertainable dominant motive of most transferees of the items sold must be the making of a charitable contribution, with the transfer of property being merely incidental and secondary to the dominant purpose of making a gift to the charity. Section 130.2005(a)(3)(B)(iv). You state that the dominant motive of buyers of the wrapping paper is donative, and that a buyer's purpose in buying the overpriced wrapping paper is clearly to make a charitable gift to the school as opposed to simply acquire the merchandise. Therefore, this requirement is met.

In conclusion, with regard to noncompetitive sales by qualifying organizations, if the associations obtain exemption identification numbers issued by the Department, such associations may engage in annual wrapping paper fundraising sales without incurring Retailers' Occupation Tax.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the

material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk

Enc.